

man from Texas (Mr. GONZALEZ) is recognized for 5 minutes.

[Mr. GONZALEZ addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Ms. HOLTZMAN) is recognized for 30 minutes.

[Ms. HOLTZMAN addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

#### THE POSTAL SERVICE DOES NOT BELONG TO THE POSTMASTER GENERAL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 30 minutes.

Mr. ALEXANDER. Mr. Speaker, the U.S. Postal Service remains a puzzle to the Nation. Though it seems simple to most of us, it is difficult to explain why the Postal Service high command does not comprehend the basic fact that an agency established to serve the people must be accountable and responsive to the people. The best explanation I have heard is that the L'Enfant super clerks view their domain as a medieval baronial estate not to be ruled necessarily in the best interest of the serfs.

A distinguished, award-winning newspaper in my district, the Paragould Daily Press, recently summed up editorially what I think is the current mood of the country with regard to the Postal Service, I would like to share their observations with my colleagues:

##### POSTAL SERVICE SERVES ALL

We repeat:

The Postal Service does not belong to the Postmaster General, the Congress or the President.

It belongs to you and me.

It is the only governmental agency with which we are in almost daily contact and in which we have a very real interest.

If we want to spend a few billion dollars for our own benefit and convenience, then we should do so.

In fact, we should insist on that privilege. The Congress, the President, the Secretary of State, the CIA, etc., are all perfectly willing to subsidize nations, governments, private industries and, yes, even conspiracies that by no stretch of the imagination can be deemed essential to the nation's ongoing interest.

So, why should we sit back and see a vital public service go down the drain?

Technical advances and the virtual elimination of the railroads as a viable conveyor of the nation's mail have had a wide impact on collection and delivery schedules.

This is a spin-off of progress, although the demise of our railroads can be viewed with some well-founded concern by the nation.

The Daily Press believes the Postal Service should be returned to the people and that it be renamed the United States Postoffice Department.

It should be managed by career employees under the overview of the Congress and a Postmaster General appointed by the President.

It should no longer be a haven for retired and less-than-successful executives of big corporations.

The U.S. postoffice system was not established to pay its own way.

It was established to serve the people and bind the nation together into a viable entity. It should not, of course, be wasteful of its resources.

However, there are many government functions costing us billions whose activities serve only limited segments of our people.

And, there is hardly ever a voice raised in protest.

Why then should we permit the demise of the one government institution which serves us all?

#### CONGRESSMAN DRINAN DISSENTS FROM THE ADMINISTRATION'S PROPOSAL TO AUTHORIZE COURT ORDERS TO APPROVE THE USE OF ELECTRONIC SURVEILLANCE TO OBTAIN FOREIGN INTELLIGENCE INFORMATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. DRINAN) is recognized for 30 minutes.

Mr. DRINAN. Mr. Speaker, I had the hope that the almost frantic desire of the Ford administration to legalize electronic surveillance solely for the purpose of wiretapping Embassies of foreign nations in the United States would fade away with the departure from Washington of a wide variety of persons who persisted in indulging, without any statutory justification, in eavesdropping on the conversations of the representatives of foreign nations residing in the United States.

Unfortunately, President Carter and his Attorney General, Griffin B. Bell, announced on May 18, 1977, that they want the Congress to join the administration in following the specious, faulty and dangerous reasoning by which Attorney General Edward Levi sought to legalize the use of extensive electronic surveillance not when representatives of foreign powers are suspected of crime in America but when information about their conversations is "deemed necessary" for the "successful conduct of the foreign affairs of the United States."

The Levi measure, condemned by the entire civil liberties community of the United States, has perhaps been somewhat improved in the administration's bill filed by Senator KENNEDY as S. 1566 and by Chairman RODINO as H.R. 7308. But the essential danger and the incredible effrontery of the Levi bill are present in the administration proposal. The bill proposes that the State Department or other agency be permitted to persuade the Attorney General to file an application for a judicial warrant permitting the agency to learn any and all things which in its judgment would be necessary or even helpful for the conduct of the foreign affairs of the United States.

This incredible purpose is shrouded and even concealed in the bill where the desire of the State Department, the Central Intelligence Agency—CIA—and other agencies to learn about the conversations of their foreign counterparts operating in the United States is surrounded by language extolling the danger of actual or potential attack on the United

States and the perils of clandestine intelligence activities of foreign powers on American soil.

The essential purpose of the administration bill is to authorize and legalize the vast network of wiretaps in which several agencies of the Federal Government are now engaged. The pressure for the enactment of the Levi measure came from the same source as does the pressure to enact the Carter-Bell proposal: the intelligence community in America which is fearful of potential indictments of some of their members as well as lawsuits by American citizens or foreign nations whose privacy has been invaded by the interception of their conversations by electronic surveillance done by American officials without court order or perhaps even without any authorization from the Justice Department.

President Carter, in his message on May 18, 1977, in the Rose Garden to selected Members of Congress and to many members of the intelligence community stressed what he conceived to be a balance between "adequate intelligence to guarantee our Nation's security" and the "preservation of basic human rights." The central question which President Carter—like everyone else who desires to legalize foreign intelligence surveillance—evaded comes to this: is the ability of the United States to obtain adequate intelligence from legal sources so bankrupt that the government must alter fundamentally the standards of the fourth amendment and insist upon a "funny warrant" given by a Federal court not because there is probable cause of crime but only because a Federal official asserts in court that the acquisition by wiretapping of the communications of foreign nations—even with American citizens—is indispensable for the maintenance of America's foreign policy?

President Carter asserted on May 18 that this is a question "on which almost complete unanimity has been arrived at between myself and the intelligence groups and the Attorney General."

Neither the President nor anyone else raised the fundamental question of what the United States would think if England, France, or another nation in the free world enacted legislation that would permit those nations to wiretap any foreigner residing within their borders not because he was suspected of criminal activity but only because the government of the nation where he temporarily made his home wants to know what he is saying to his superiors or to his friends in his country of origin.

Attorney General Bell has failed to confront any of the questions behind the unprecedented proposals which he is urging on the country. At the White House conference on May 18 the Attorney General expressed the hope that the new administration could "restore the confidence of the American people in all of our institutions." He continued by noting that such confidence was nowhere more lacking "than in intelligence gathering." The Attorney General asserted the hope that bringing "the judiciary into the process" would be beneficial because "I think the American peo-

tion of gadgetry for commonsense humans. Instead, the electronics are designed to handle, according to careful plan, well-understood tasks at speeds which exceed human reflexes. The B-1 in fact carries two computers, even though one could do the job. This gives the system a fail-safe characteristic. Also it conforms to a plan that was adopted early in the airplane's design; namely, to allow space or capacity for advanced capabilities to be incorporated into future versions.

The primary event in the history of digital computer development was the invention of the transistor. This occurred in 1947, in a non-Government laboratory, under private company funding. Its usefulness was not recognized at the time, and so Government regulation or relevance rules would not have helped. Since then computer development has been evolutionary rather than revolutionary, but rapid. One measure of capability is speed of calculation of the current largest machine. This seems to increase by a factor of 10 every 6 years or so. For on-board aircraft calculations, smallness of size is important. Circuit miniaturization techniques have shown great progress during the last 10 years. There have been many sources of computer R. & D. funding.

At the same time that the super-size ILLIAC IV was being developed within a Government laboratory under direct budget allocations of two separate Federal agencies, several private companies were working on miniaturization development in their competition for the pocket calculator market.

An important related technology is called multiplexing. Nowadays this means the collection of many electronic inputs and their systematic feeding to a computer. Obviously this is necessary if there are one or two high-capability computers but many functions to be monitored, as in the B-1. In keeping with the extra-capacity concept, the airplane has three multiplex systems. This technology got underway in the 1920's, for the more efficient utilization of telephone cables. During the 1960's it was applied to data collection in experimental facilities, especially in wind tunnels. Such tunnels were direct-government funded in NASA and DOD centers, and indirect-Government funded—through aircraft sales and IRAD allotments—in airframe companies.

#### B-1 WEAPONS SYSTEMS

During the lifetime of the B-1 bomber, it will probably carry a variety of weapons, using several concepts of guidance or aiming. These may include laser-designating and infrared seeking. The laser concept, namely that a beam of the right wavelength can gather strength as it moves through a crystal or gas whose molecules have been excited in a certain way, was recognized in the late 1950's. Since the mid-1960's the DOD has been cultivating progress in this field, through a reasonable mix of IRAD and CRAD funding. In general, small amounts of IRAD seed money are allowed for the testing of concepts on a small scale, and the more promising work is then rewarded with contract support for larger

scale development. There are three important general categories of lasers, and many subcategories, that compete with each other for CRAD money. Analogously, much work on instruments sensitive to that part of the electromagnetic spectrum known as the infrared has been done under IRAD funding during the last 10 years.

#### SUMMARY

To summarize all this, I would simply say that the B-1 weapons system is a product of the research and development that has preceded it, and that the kinds of weapons systems that we will need in the future will depend on our maintaining a strong and diverse national R. & D. program.

We have often allowed our potential adversaries to achieve certain numerical advantages. To compensate for this, we need to have a quality advantage in hand. Most importantly, we must not allow the possibility of a technological surprise which could seriously tip the scales against us. I am concerned that, according to the National Science Foundation, DOD research and development funding has experienced a real decline of 22 percent during the past 10 years.

I would like to mention two other aspects of R. & D. in the physical sciences which are only indirectly related to national defense. I would characterize them as economics, and morale.

Many economists have reported studies which indicate that resources assigned to scientific research and development multiply themselves in an industrial economy. This seems only logical; entire new industries, such as the liquefied gas business which is important in modern steel manufacturing and in medical care, have resulted from space program R. & D. Chase Econometrics estimates that a billion dollar annual NASA budget increase would affect the economy in 1986 as follows: gross national product \$23 billion higher; inflation rate 2 percent lower; employment level 1.1 million higher.

Although the precise results of R. & D. cannot be predicted, it is predictable that there will be results. We know that American intellect will produce innovations for us; we know that American insight will perceive national defense applications; we know that American ingenuity will make those new systems a reality. Return for our R. & D. dollar is inevitable. I do not know if this is because of the mind-set of the typical scientist/engineer or if it is due to some other cause. But I cannot help contrasting the solid results with those produced by other competitors for the budget dollar, such as the food stamp program, or the Head Start program, or countless other well-intentioned schemes.

I think that the American people take satisfaction in the continuing success story that is called research and development, and I think that the Congress should, too. It is a national asset.

#### THE TREATMENT OF ANATOLY SHCHARANSKY IS A SOVIET TRAGEDY

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

man from Florida (Mr. BURKE) is recognized for 5 minutes.

Mr. BURKE of Florida. Mr. Speaker, I am saddened and angered at reports from Moscow concerning a vicious official action by the Soviet Government against a valiant and articulate individual, Anatoly Shcharansky. Mr. Shcharansky is a Jew who was refused an exit visa and became part of an unofficial group who monitor Soviet compliance with the Helsinki Accords on human rights. Highly regarded for his personal courage and his skill at public relations, Shcharansky has been a crucial figure among active Soviet dissidents. The Soviet Government has formally charged Shcharansky with treason and accused him of being an agent of the Central Intelligence Agency. This charge is the most brutal attack perhaps since the evil reign of Josef Stalin on the growing movement for broader freedoms in Soviet Russia.

There is no doubt that plenty of "evidence" will be adduced smearing the dissidents and painting the United States as engaged in subversion of Soviet society and state. The coopted, the corrupted, the misguided, and the fearful will offer outrageous testimony. The inevitable verdict will follow: guilty of treason, to be punished by disappearance into the fearful world of Soviet labor camps, or perhaps the even more fearful mental hospitals where other dissidents and religionists have been "treated."

Mr. Speaker, I am uncertain about the administration's current attitude on human rights in the Soviet Union. I know that it was most vigorous earlier, including personal communication with Sakharov and a series of strong statements on the subject. Lately, however, it appears the President is taking a softer line. Undoubtedly the Soviets recognizing the President's softer approach will hasten to say that the incarceration of Shcharansky has no connection with the human rights issue, but merely reflects a matter of Soviet internal policy. I will wait to see just what President Carter will say. So too will others throughout the world.

Our reaction is important, Mr. Chairman, because this "trial" precedes by merely 2 weeks the Belgrade discussions on human rights under the Helsinki Accords. There is no question that if we intend to do more than use rhetoric about human rights that we must be firm about our commitment to human rights, and we must keep faith with the brave spirits who run fearsome risks to further these rights, freedom fighters like Anatoly Shcharansky. Why? Because the treatment of him may well be the shadow that casts its image before the similar treatment of others.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

[Mr. ANNUNZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentle-

ple trust the judiciary, and they will have more confidence in the system if we have the executive, the congressional and the judiciary all tied into the process so as to have one check the other." The critical point totally omitted by the Attorney General is the secrecy built into his plan which prevents even the judge much less the Congress from knowing the real reasons why the Secretary of State for instance, wants to wiretap the Romanian Embassy or indulge in electronic surveillance on a "faction" of the Government of Saudi Arabia.

This crucial question was shrugged off totally by Senator Thurmond at the White House press conference when he stated "there is no question that our national security demands that we collect foreign intelligence. Electronic surveillance is one of the best ways to do that."

The civil liberties community in America objects strenuously to the Carter-Bell proposal because it virtually strips foreigners residing in America of any rights under the fourth amendment by subjecting them to invasions of their privacy for reasons that would not justify such an invasion upon American citizens or aliens residing permanently in America.

#### AN ANALYSIS OF THE ADMINISTRATION'S BILL

An analysis of the Carter administration's bill reveals that it contains the same pernicious assumption of the Ford-Levi bill; namely, that the Congress should eviscerate the letter and spirit of the fourth amendment in order to allow the State Department, the CIA, the Defense Department, and other agencies to acquire information which allegedly they cannot otherwise secure. Some of the assumptions running in this unbelievable assault on the fourth amendment include the following: First, the barrage of electronic eavesdropping now indulged in by the Federal Government brings information that is useful and necessary to our foreign policy; second, the legalization of this invasion of the privacy of the representatives of foreign nations in America is not in violation of international law, and third, clandestine intelligence gathering by foreign nations in the United States constitutes such a threat to our national security that only the most extraordinary compromising of the Bill of Rights can protect America from the agents of a foreign-based political organization.

Members of the Senate who in the 94th Congress favored the Foreign Intelligence Surveillance Act (S. 3197) regularly stated that this would bring the rule of law to the intelligence community and that, in addition, it would be a shield for those persons who regularly did intelligence surveillance without the support of defined statutory guidelines.

The question above all questions has hardly been mentioned in whatever debate has occurred on this question up to this time: Can the alleged need of the intelligence community for clandestine information gathering in the United States justify a dramatic departure from any previous legitimate interpretation of the meaning of the fourth amendment?

The vigorous drive now being made by

the intelligence community and by the Carter administration to bring American employees who regularly eavesdrop foreign nationals "out of the state of sin" is premised on the conclusion that the information acquired by these "plumbers" in the name of national security is essential to the safety, defense and national interest of the United States. There is hardly a shred of solid evidence for that conclusion in all of the testimony given to the Congress on several occasions by Attorney General Edward Levi and now by representatives of the Carter administration. The fact appears to be that the intelligence community has erected all types of sophisticated methods of intercepting what foreign embassies in Washington send back to their home countries.

Responsible and knowledge observers tell us that virtually all of the information so gathered is worthless. But the intelligence community, determined to exploit its powerful role, now wants to keep the Congress ignorant of the contents or the benefits of the information which they clandestinely gather while simultaneously frightening the Congress into accepting the illusion that the "reforms" proposed by Presidents Ford and Carter will bring protection to our Federal Government from foreign agents while simultaneously guaranteeing the privacy of American citizens. The reality is that the intelligence community, having created a Frankenstein from a paranoia intensified by total secrecy, now seeks to warp and distort the fourth amendment to protect a widespread practice which cannot be justified by facts, international law or any real needs of the American Government.

Reading the Foreign Intelligence Surveillance Act of 1977 proposed by the Carter administration reminds one of the language and spirit of laws proposed in the 1950's to protect the "internal security" of the United States. The administration's bill would permit wiretaps on any "faction" of a foreign nation residing in America if such "faction" is "not substantially composed of United States persons." The power to wiretap extends to any "foreign-based political organization" operating in America or to any "entity which is directed and controlled by a foreign government." The power to install electronic surveillance equipment extends to any foreigner who "knowingly engages in clandestine intelligence activities for or on behalf of a foreign power under circumstances which indicate that such activities would be harmful to the security of the United States." All these individuals do not, of course, have to be engaging in anything which even approaches a crime. Existing law permits the Federal Government to use the ordinary judicial warrant to obtain wiretapping for any person about whom there is probable cause that he is indulging in sabotage, terrorism, or espionage.

The real grab for power by the intelligence community can be seen in the definitions of "foreign intelligence information" in the administration bill. There are several definitions of this key element, but the most outrageous is the claim that a Federal judge is virtually

required to authorize wiretaps when the State Department, for example, desires "information with respect to a foreign power deemed essential to the successful conduct of the foreign affairs of the United States."

The definition of "electronic surveillance" likewise reveals what the intelligence community really desires—the right to obtain a judicial warrant to target any foreign national about whose activities the intelligence community would like to be informed. The definition of electronic surveillance makes it clear that this involves the acquisition of information "under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes." The bill authored by the intelligence community and embraced by the Carter administration openly concedes that the judicial warrant which the bill would authorize violates every "reasonable expectation of privacy" which a foreigner could expect in America and that, in addition, the warrant proposed for intelligence gathering would never be issued for law enforcement purposes. The definition of "electronic surveillance" also concedes that it involves the interception of a communication "without the consent of any party thereto."

It is most important to note that the Carter-Bell bill, while alleging that it does not claim any inherent power possessed by the President to wiretap foreign nationals, does assert this claim for "the acquisition by the United States of foreign intelligence information from international communications by a means other than electronic surveillance" which includes only "wire or radio communication."

The administration bill provides for "minimization" procedures; these are designed to minimize the acquisition, retention and dissemination of any information concerning American citizens wherein such information is not relevant to the purposes for which the Federal Government established the wiretap. One would think that at least in this instance the bill would compel the Government to expunge or destroy the irrelevant information gathered inadvertently on an American citizen. But the bill, incredible as it seems, states that the "minimization procedures shall not preclude the retention and disclosure, for law enforcement purposes, of any information which constitutes evidence of a crime if such disclosure is accompanied by a statement that such evidence, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General." In such a case the Government has the right to assert by affidavit that "an adversary hearing would harm the national security or the foreign affairs of the United States." After such a contention is made the judge may review the circumstances under which the warrant to obtain the evidence on an American citizen was made; if he concludes that the surveillance was legally authorized, the evidence obtained thereby may not be suppressed.

The application by which the Attorney

General or his designate can obtain a judicial warrant must contain, under the administration bill, a minimum of information. The identity of the individual targeted may be withheld if there is a "description of the target of the electronic surveillance." The requesting authority must certify that the information sought "cannot reasonably be attained by normal investigative techniques."

The role of the Federal judge in the administration proposal is almost a degradation of the Federal judiciary. The judge is not permitted to question the certification of the administration that the information sought is in fact foreign intelligence information. He may do so only when the target of the surveillance is a U.S. citizen or a permanent resident alien. In such case the judge must accept the certification unless he finds that it is "clearly erroneous" on the basis of the statement submitted with the application.

Even more fraudulent is the pretense in the administration bill that the judge is in a position to make any well-informed judgment. The judge must authorize the electronic surveillance requested when there is "probable cause" to believe that the target "is a foreign power or an agent of a foreign power." Under the administration bill there appears to be no way by which a judge could receive or even request information as to why the intelligence sought was necessary for the conduct of American foreign policy. The judge is a rubber stamp from whom virtually all of the essential background of the requested authorization could be withheld.

In view of the fact that Federal judges now under title III of the Omnibus Crime Control and Safe Streets Act of 1968 virtually never deny a request for wiretaps, Federal judges would be in all probability even more reluctant to go against the Government when the request originates with the intelligence community and is surrounded by warnings that the defense or security of the United States would be endangered if the requested authorization for surveillance is not granted.

The role of the Federal judge in the administration bill is virtually identical with the judicial role in S. 3197, which the Senate Judiciary and Intelligence Committees reported favorably in 1976. That role is almost a mockery and a travesty of the function of a Federal judge. Under these bills for electronic surveillance for informational purposes alone, the Federal judge is required to preside over the emasculation of the fourth amendment and grant judicial warrants without information, without standards, and without any regard to the right of privacy which Justice Brandeis has called "the right most valued by civilized men."

Even the time periods permitted for invasions of the privacy of foreign nationals is abused under the administration bill. The standard in the existing criminal wiretap statute, 18 U.S.C. 2518, is 30 days, but the administration bill would authorize surveillance for 90 days on U.S. citizens or permanent resident aliens and an entire year on all other persons whose phones are to be tapped.

The administration bill requires a Federal judge to issue an order which will permit those who execute the electronic surveillance on foreign nationals to compel a "landlord, custodian, contractor" to furnish "forthwith any and all information, facilities, or technical assistance, necessary to accomplish the electronic surveillance." The court order will also mandate that landlords and custodians keep any secrets which they learn according to procedures to be approved by the Director of Central Intelligence.

The administration bill, H.R. 7308 and S. 1566 filed by Chairman RODINO and Senator KENNEDY, also authorizes the Attorney General in an emergency situation to authorize electronic surveillance for a period not to exceed 24 hours. If the electronic surveillance is terminated before any court order is granted, the information obtained from such surveillance may never be revealed in any judicial proceeding or to any congressional committee. The contents of the conversations recorded may be revealed to a U.S. citizen whose conversations were intercepted only if the Attorney General allows it.

The rights which Americans have to sue for monetary damages when the Government wiretaps them in violation of the United States Code are withdrawn from foreign nationals even though their privacy has been invaded in violation of the law.

Another bizarre idea in the administration bill, which derives from the Levi proposal, recommends that all applications for judicial warrants authorizing electronic surveillance for foreign intelligence purposes be restricted to seven district court judges selected by the Chief Justice of the United States. No standards are set forth for the selection of these chosen seven "wise persons" nor has anyone in the intelligence community confessed to being the author of such an idea which is practically insulting to the integrity of Federal judges. In the event that one of these seven judges somehow denies an application, the Chief Justice is mandated to establish a "special" court of appeals. Again, no standards are established either for the selection of the three judges or with respect to the norms by which they should reverse a judge who refused to carry out the ministerial act assigned to him by the law.

#### THE PRESS MISSES THE INSIDIOUS ASPECTS OF THE FOREIGN INTELLIGENCE GATHERING PROPOSAL

Even in the most sophisticated journals the idea lingers on that somehow Federal judges will not permit foolish electronic surveillances to continue. The Washington Post on May 23, 1977, cautiously praised the Carter-Bell proposal and concluded that the bill would insure that—

Future electronic surveillance in this country will be governed not by presidential conscience or caprice, but by the rule of law.

If the bill provided that Federal courts pursuant to a Presidential application would give a warrant to tap when there was probable cause of crime on the part of diplomats, then we could say that "the

rule of law" would be strengthened by the Carter proposal. But the fact is that there is no "rule of law" when American officials petition for permission to intercept the communications of agents of foreign nations in this country. Those making the application need make no showing beyond the fact that in their judgment the information which they seek to obtain by clandestine methods would be important in their decision-making. No evidence exists to suggest that the gatherers of foreign intelligence would be more careful or more discreet if they had to acquire a judicial warrant before they commenced their acquisition of information. Indeed, one could argue that the present possibility of their being exposed would be eliminated since they would be acting under full color of law and could not even be sued by persons who might be wiretapped illegally.

The Washington Post states that under the proposed system there "could be no legal blank checks." The fact is that there can be nothing but "legal blank checks" since the bill suggests that Federal judges substitute their judgment for that of the Secretary of State or the Director of the CIA.

The Christian Science Monitor on May 20, 1977, concluded:

The Administration bill "would put the country well on the way towards resolving what Mr. Carter called the "inherent conflict" between legitimate intelligence and preserving rights.

But again, this newspaper misses the essential point that it is a perversion of the fourth amendment to pretend that it has anything to do or any standards to offer to a Federal judge required by law to issue a judicial warrant not to track down criminals but to listen surreptitiously to the conversations of foreigners in our Nation on the supposition that information about their plan for international commerce or their hopes for their country in the family of nations are important to the formulation of American foreign policy.

No newspaper appears willing to take on the fundamental question left open by the Supreme Court in 1972 in the Keith decision. In that ruling the Supreme Court outlawed all warrantless wiretaps for domestic purposes but was not called upon to rule whether wiretapping without a warrant was permitted for foreign intelligence. The fact is that there is no law, no reason, no international authority that can justify the contention that an American President as Commander in Chief can in peacetime conduct electronic eavesdropping without any of the restraints mandated by the fourth amendment. It is an illusion to think that we have "reform" when we seek to legitimize abominable and deplorable invasions of the privacy of foreign nations by casting the burden of approving these practices in an ex parte decree by a Federal judge.

No one in the press or even in the legal profession has apparently realized that the proposal to legalize the acquisition of information unrelated to crime or criminal conduct represents the very first time in American history that Congress would permit intrusions into the lives of

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aliens and citizens alike for activities having nothing to do with unlawful conduct. In addition, the proposal that the Congress authorize judicial warrants merely to acquire information violates the very words of the fourth amendment which specify that the applicant must submit a sworn statement "particularly describing the place to be searched and the persons or things to be seized."

The New York Times on May 7, 1977, expressed editorially its desire for "corrective legislation" in the area of foreign intelligence surveillance. The editorial notes that the fourth amendment protects "persons" without distinction and by implication rejects the contention "of the intelligence agencies to give less protection from surveillance to transient but legal visitors than to citizens and permanent residents." Despite this and other difficulties which the Times editorial points out, the newspaper somehow hopes and desires the "enactment of this crucial measure." Tom Wicker and Anthony Lewis of the Times have written in favorable terms of the proposal to place electronic surveillance solely for the purpose of acquiring foreign information under the supervision of the Federal courts. But neither they nor hardly anyone else has confronted the question that both the Levi and the Bell proposals appear to be in direct contradiction to the Vienna Convention on Diplomatic Relations. This treaty, ratified by the Senate in 1965, came into force in the United States in 1972. The convention requires that the premises of a diplomatic mission and its personnel, including their private residences, be "inviolable"—see sections 22, 24, 27, 29, and 30. This treaty in effect prohibits electronic surveillance of foreign emissaries and the premises which they occupy.

Former Attorney General Levi testified before a House Judiciary subcommittee in 1976 to the effect that the proposed Foreign Intelligence Surveillance Act was not inconsistent with the convention. He based that opinion on a legal memorandum prepared by the Office of Legal Counsel in the Justice Department. Mr. Levi refused to provide the subcommittee with copies of that memo but allowed members to read it in camera. I read that document and found it unpersuasive. I am inclined to think that the proposals to validate electronic surveillance for the sole purpose of acquiring information in a surreptitious way violates the letter and spirit of the Vienna Convention.

I feel strongly that the contents of that memo, if made public, might well alter the thinking of a number of people with regard to this question. As a result, I asked Attorney General Levi on January 12, 1977, to declassify that document. On February 28, 1977, Attorney General Bell responded to that request in the following letter:

OFFICE OF THE ATTORNEY GENERAL,  
Washington, D.C., February 28, 1977.

Hon. ROBERT F. DRINAN,  
House of Representatives,  
Washington, D.C.

DEAR MR. DRINAN: This is in response to your request of January 12, 1976, to Attorney General Levi for a copy of this Department's memorandum concerning the effect of the

Vienna Convention on Diplomatic Relations on certain intelligence activities.

That memorandum is, as you are aware, classified "Secret" pursuant to Executive Order 11652, which requires a determination that its "unauthorized disclosure could reasonably be expected to cause serious damage to the national security." Because of your request I have personally reviewed the memorandum and solicited the views of the Department of State, and I have concluded that it is properly classified, an opinion shared by the State Department. Therefore, I regretfully cannot accede to your request for a copy of the memorandum for insertion in the CONGRESSIONAL RECORD.

You might be interested to know that last year a Freedom of Information request for this memorandum was made by the American Civil Liberties Union. That request was likewise denied, and an appeal of that decision is presently pending in the Department. Judicial review of a final denial may be sought in that case pursuant to 5 U.S.C. § 522(a) (4) (B).

Sincerely,

GRIFFIN B. BELL,  
Attorney General.

I expect to continue to pursue every avenue of appeal so that the secret memo which is enormously relevant to the question of foreign intelligence surveillance will be revealed for everyone to read.

CONGRESSMAN KASTENMEIER'S PROPOSAL,  
H.R. 5632

On March 28, 1977, Mr. KASTENMEIER, the distinguished and able chairman of the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, filed a bill designed to eliminate undesirable features in the Levi proposal. Congressman KASTENMEIER's intention is to bring all electronic surveillance under the standard set forth in the Fourth Amendment to the Constitution. Not everyone will be able to agree that H.R. 5632 accomplishes that objective. In an explanation of the bill in the CONGRESSIONAL RECORD for March 28 (p. H2628), Mr. KASTENMEIER notes that his bill would permit foreign intelligence surveillance to continue but only after the issuance of a judicial warrant supported by probable cause that the surveillance would reveal evidence of criminal activity. The bill adds violations of the Export Administration Act and the Foreign Agents Registration Act as crimes for which a judicial warrant can be obtained. Mr. KASTENMEIER notes that "wiretaps already may be sought in cases of violations of espionage, sabotage, and treason statutes."

The Kastenmeier bill does not, however, appear to restrict its applicability solely to situations where evidence received from an electronic surveillance might lead to knowledge of a crime. At least the bill defines foreign intelligence information in such a broad manner—virtually identical to the Levi bill—that it is difficult to see how the impact of the Kastenmeier bill would be essentially different from that intended by the Levi or Griffin Bell proposals. Indeed, the purpose of H.R. 5632 as set forth in its preamble is "to provide special procedures in the case of applications for court orders for the interception of oral or wire communications to obtain foreign intelligence information."

The Kastenmeier bill does, however,

eliminate the idea of only seven judges acting in this area and provides that all of the judges of the U.S. Court of Appeals for the District of Columbia Circuit would have jurisdiction over applications for authorization to intercept wire or oral communications. The Kastenmeier bill is also progressive in that it does not structure a new chapter 120 of title 18 of the United States Code but amends the existing electronic surveillance statute, chapter 119, to permit surveillance in the context of the traditional criminal probable cause showing—although once again, the bill expressly states that it would permit surveillance for intelligence purposes.

IS SURREPTITIOUS WIRETAPPING ESSENTIAL TO  
U.S. FOREIGN POLICY?

All of those who have written about electronic surveillance for intelligence purposes have condemned and lamented the scandalous situation by which an unknown but probably large number of wiretaps have been installed in the name of national security. At the same time, virtually everyone assumes—without any empirical evidence whatsoever—that the mightiest nation in the world must continue to engage in the dirty business of wiretapping if it wants to protect itself against nations who send authorized representatives to America. Just a few years ago such a proposition would be rejected as preposterous. But the grip which the intelligence community has on the Congress and on the country is so intense at this time that anyone who asserts the idea that American officials should apply for wiretaps only to apprehend criminals is deemed to be naive and unrealistic.

The fact is that those who are proposing anything different from this traditional legal standard must bear the burden of demonstrating that the profound alteration which they are recommending is the only possible remedy for the problem whose existence they allege. The intelligence community has not offered a single bit of evidence that wiretapping merely for the purpose of gathering intelligence is the one indispensable element which they require in order to protect the Nation from calamities. The Ford administration and Attorney General Levi offered not a scintilla of evidence that the interception of the communications of the authorized personnel of foreign nations in this country was necessary or desirable. The Carter administration has defined the overwhelming consensus in the civil liberties community in its proposal to permit easy bugging and convenient wiretapping of both foreign nationals and American citizens—when the latter group phone embassies or talk to foreign businessmen by electronic means. The least that the Congress and the country could expect is disclosure by the administration of enough evidence to constitute at least some justification for the unprecedented demands now being made by the intelligence community.

Secrecy in America—even in the conduct of its foreign policy in peacetime—should be a very rare exception. The invasion of privacy by electronic means carried out by the Federal Government—

even on foreigners—should be a phenomenon which should be encouraged or tolerated only for the most extraordinary circumstances in the most unusual cases. The proposal that this Nation legalize and validate routine requests of super-secret intelligence officials to engage in wiretapping is shocking and shattering. The Congress and the Nation should demand an infinitely more precise justification for these extremely radical measures than has been offered by the Ford or the Carter administrations.

#### VETERANS' AFFAIRS COMMITTEE TO CONDUCT HEARINGS ON PROGRAMS TO UPGRADE BAD DISCHARGES FOR CERTAIN VETERANS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. ROBERTS) is recognized for 10 minutes.

Mr. ROBERTS. Mr. Speaker, on June 21 and 22, the Committee on Veterans' Affairs will be conducting hearings in reference to President Carter's and former President Ford's programs to upgrade bad discharges for certain veterans who received such discharges resulting in service during the Vietnam era. During the hearings we will attempt to get all the facts pertaining to the programs; number of veterans affected; record of service of the individuals affected; cost of the programs, et cetera.

Mr. Speaker, other than two releases received from the Department of Defense, we have not been advised of the total impact of these discharge review programs nor have we been advised of the costs involved. As an example of our inability to receive information pertaining to the programs, it was recently called to my attention that the Acting Assistant Commissioner for Operations of the Immigration and Naturalization Service had sent a message to all customs stations outlining a plan of action being imposed on all customs inspectors to assure that returning deserters from military service are extended courtesy of the port upon their reentry into the United States. The instructions specifically state that returning personnel "will be accorded professional and courteous service." It is my understanding that most, if not all, such deserters will have transportation tickets provided them by the Government. Deserters will be deemed members of the U.S. military on orders and will be exempt from any inspection by customs officials. In other words, it would appear that these individuals will be able to enter the United States after an extended period of absence and will be able to bring with them anything they desire.

It was recently called to my attention, although I have been unable to verify it, that service records of some members whose discharges are being upgraded have been altered and, in many instances, such records have been destroyed. If this is true a review of such records will not reflect "dishonorable service" should the Congress desire to take action to deny veterans' benefits as a result of such service.

I think this is appalling and we hope to find out exactly what is going on when we begin our hearings during the week of June the 20th.

Mr. Speaker, we must know what is going on and I hope that all Members who have any information that would be helpful to the committee will submit that information to us during hearings on this issue.

#### DEPARTMENT OF ENERGY ORGANIZATION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia (Mr. HARRIS) is recognized for 5 minutes.

Mr. HARRIS. Mr. Speaker, the significance of H.R. 6804, the Department of Energy Organization Act, is that Congress is making it clear that our Government is going to take effective command of energy policy, and that we are going to do so in a comprehensive manner. In the future, the Government and not the major oil companies will determine the public's energy policy.

The essential problem with the way our Government has dealt with energy issues in the past has been that we have lacked a comprehensive national energy policy and, moreover, that the responsibility for formulating and implementing policy has been widely dispersed through the executive branch and independent commissions.

The need for an energy policy is apparent. Colombia knows more about its coffee production than our Government knows about oil and gas production, even though energy is more important to our economy than coffee is to theirs. The administration and the Congress can and are proceeding to develop the national energy policy; this process has preceded, as it should, through public debate and under the public's scrutiny.

The effective management and implementation of a comprehensive energy policy is dependent upon the consolidation of most Federal energy programs. Of course, the general purpose of H.R. 6804, the bill before us today, is to create a Department of Energy and thereby to consolidate the functions of a vast number of executive agencies and independent commissions that have shared the responsibility for energy policy. I support this purpose.

Clearly understood lines of authority and responsibility will enable our Government to more effectively deal with our energy problems. Consolidation will also tend to eliminate waste and duplication. Very importantly, with greater coordination of information gathering activities, a policy based upon accurate and complete data will become possible.

Needless to say, however, not every Federal program affecting energy policy can or should be brought into the new Department of Energy or placed under the authority of the Secretary of the proposed Department. A review of H.R. 6831, the President's energy policy bill, demonstrates that tax policy is or could be a major aspect of our national energy policy. Yet, it is not reasonable to bring the Treasury Department within the new Department of Energy. I do not believe

that anyone has seriously suggested doing so.

The Treasury example may be somewhat extreme, but the principle is clear: There are energy functions that should not be brought under the direct authority of the Secretary of Energy. Consolidation per se is not the goal of this legislation. Rather, the intent of this bill is to create a vehicle through which we can better formulate and implement policy. Blindly lumping all Federal energy programs in one department will not necessarily provide us with the best vehicle to achieve the end we seek.

When the House considered the amendments to H.R. 6804, a number of amendments were offered to restrict or expand the authority of the Department of Energy for certain energy programs. While I believe that, in general, consolidation of energy programs will be beneficial, I believe that in some instances it would not be advantageous to place certain programs under the authority of the Secretary.

For example, I supported an amendment to transfer authority for regulating the wellhead price of natural gas from the proposed Economic Regulatory Administration to the Federal Energy Regulatory Commission. While both are within the Department of Energy, only the Economic Regulatory Administration is under the direct authority of the Secretary. Natural gas regulation should utilize cost based pricing. I believe that protection from political pressure and executive interference would be maximized if the authority for setting natural gas rates was placed in the independent Federal Energy Regulatory Commission, rather than in the Economic Regulatory Administration.

#### DEPARTMENT OF ENERGY ORGANIZATION ACT

(Mr. PERKINS asked and was given permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. PERKINS. Mr. Speaker, as we debate the proposed Department of Energy Organization Act, the Members ought to know that if the Congress and the administration which had been in office back in the early 1950's had done right by the American people, we would not have to be here discussing energy problems today.

If the Government had not been negligent back then, we would not have an energy problem. There would be no OPEC, there would be no energy shortage, and our economy would not be ridiculed and ripped by the price of oil which we are importing today.

Back then, after World War II, this country was well on the way to a process of refining oil from coal that would have produced liquid fuel just as cheaply from coal as it was being produced from petroleum. As a matter of fact, we were also well along the way toward underground coal gasification. The liquefaction plants were located at Louisiana, Mo., and the underground gasification plant was located at Gorgas, Ala.

In 1953, they needed an appropriation of about \$2 million to continue their

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